

LEGISLATIVE DELEGATION HELD UNCONSTITUTIONAL BY FEDERAL COURT

Pan American Standard Brands, Inc. v. United States

177 F. Supp. 769 (Cust. Ct. 3d Div. 1959)

The legislature of Puerto Rico, pursuant to power delegated by Congress,¹ declared tariff rates on coffee in 1935.² This declaration was amended in 1955 by an authorization to the Secretary of Agriculture and Commerce of Puerto Rico to increase or reduce the existing rates for certain purposes.³ The Secretary held a public hearing and, in a resolution approved by the Governor, doubled the rates. Plaintiffs, having been assessed the higher rates, contested the constitutionality of the delegation to the Secretary. The Customs Court held the delegation unconstitutional.

The court was confronted with a problem of standards in legislative delegation. The finding of unconstitutionality is based solely upon what the court terms "an unbridled discretion to fix rates of duty on imported coffee . . .,"⁴ considering the standards of the statute insufficient.

The United States Supreme Court, as early as 1892,⁵ has repeatedly stated that statutory standards are necessary to validate the delegation of legislative authority.⁶ However, the term "standards" has been considerably broadened, until today an "intelligible principle" is considered sufficient.⁷ The adequacy of the standards involved, under such a flexible criterion, depends upon a number of factors, including: (1) the scope of the power involved,⁸ (2) the practicability of Congress' laying down precise standards,⁹ (3) the peculiar suitability of the problem involved to the legislative or the administrative process,¹⁰ (4) procedural safeguards against abuse of discre-

¹ Tariff Act of 1939 § 319, 46 Stat. 696, 19 U.S.C.A. § 1319 (1960).

² 13 P.R. Laws. Ann. § 2201.

³ *Ibid.*, Amount of duty; definition: ". . . *Provided*, That when market conditions may warrant it and for the purpose of protecting the consumer or the coffee industry, the Secretary of Agriculture and Commerce is hereby authorized, until June 30, 1958, to increase or reduce the duty levied by sections 2201-2205 of this title, after a public hearing to that effect. The reduction or increase determined by the Secretary of Agriculture and Commerce shall be subject to the approval of the Governor. Every resolution increasing or reducing the duty levied shall be accompanied by a statement concerning the considerations borne in mind for making the change; . . ."

⁴ *Pan American Standard Brands, Inc. v. United States*, 177 F. Supp. 769, 775 (Cust. Ct. 3d Div. 1959).

⁵ *Field v. Clark*, 143 U.S. 649, 692 (1892).

⁶ See Davis, *Administrative Law* § 2.02 (1958).

⁷ *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946); *Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928).

⁸ *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935).

⁹ *Carlson v. Landon*, 342 U.S. 524 (1952); *NBC v. United States*, 319 U.S. 190 (1943); *Buttfield v. Stranahan*, 192 U.S. 470, 496 (1904).

¹⁰ *Carlson v. Landon*, *supra* note 9.

tion,¹¹ and (5) the inclusion of penal provisions in the subject matter of the delegation.¹² These are "interlocking" factors in that the strong presence of one may make up for the absence of others. As with many other problems of constitutional law, the process of decision becomes a weighing and balancing process. Where precise standards have been impractical and the problem involved is peculiarly suited to administrative determination, the Supreme Court has not hesitated to uphold vague delegations.¹³ It is difficult to determine the "upper limit," however, due to case-to-case variance in the factors noted. This limit, of course, must be drawn somewhere short of the delegation in *Schechter Poultry Co. v. United States*,¹⁴ where the scope of the delegation overshadowed factors in favor of constitutionality.

In only two cases, both in 1935, has the Supreme Court actually overturned delegations to public authorities on the basis of inadequate standards.¹⁵ The two cases have been explained away by most writers upon consideration of the times, the membership of the court, and the tremendous scope of the delegated power in the *Schechter* case.¹⁶ While both decisions used language requiring precise legislative "guidelines," no commentator has been found who cites this as a true ground of the decisions. One well-recognized authority doubts that either decision is of more than questionable authority today.¹⁷ In fact, the Supreme Court has reversed the only decision following the two cases which has reached the Court.¹⁸

The *Panama Refining Co. v. Ryan* and *Schechter* cases are not cited as authority by the Customs Court, which bases its argument upon a comparison of the language of the Puerto Rican statute with the language involved in some eight cases which have upheld delegations.¹⁹ The Court argues that those cases are determinative of *boundaries* of permissible

¹¹ *United States v. Rock Royal Co-operatives*, 307 U.S. 533 (1939); *Panama Refining Co. v. Ryan*, *supra* note 8.

¹² *Fahey v. Mallonee*, 332 U.S. 245 (1947).

¹³ *E.g.*, *NBC v. United States*, *supra* note 9; *United States v. Rock Royal Co-operatives*, *supra* note 11. See Davis, *Administrative Law* § 2.04 (1958), where the author contends that delegations with *no* standards have been upheld, citing *Fahey v. Mallonee*, *supra* note 12; *McKinley v. United States*, 249 U.S. 397 (1919); *St. Louis, I. M. & S. R. R. v. Taylor*, 210 U.S. 281 (1908).

¹⁴ *Schechter Poultry Co. v. United States*, 295 U.S. 495 (1935) (discussed *infra*).

¹⁵ *Ibid.*; *Panama Refining Co. v. Ryan*, 293 U.S. 288 (1935).

¹⁶ Davis, *Administrative Law* § 2.06 (1958); Jaffe, "An Essay on Delegation of Legislative Power," 47 *Col. L. Rev.* 359, 561 (1947).

¹⁷ Davis, *Administrative Law* § 2.06 (1958).

¹⁸ *Mallonee v. Fahey*, 68 F. Supp. 418 (S.D. Cal. 1946), *reversed*, *Fahey v. Mallonee*, *supra* note 12.

¹⁹ *Lichter v. United States*, 334 U.S. 742 (1948); *Bowles v. Williamson*, 321 U.S. 503 (1944); *Yakus v. United States*, 321 U.S. 414 (1944); *New York Central Securities Corp. v. United States*, 287 U.S. 12 (1932); *Hampton, Jr. & Co. v. United States*, *supra* note 7; *Field v. Clark*, 143 U.S. 649 (1892); *Alaska Steamship Co. v. Mulaney*, 180 F.2d 805 (9th Cir. 1950); *Gallardo v. Porto Rico Ry., L. & P. Co.*, 18 F.2d 918 (1st Cir. 1927).

delegation,²⁰ and proceeds to distinguish each from the language before the court on a narrow semantic basis. Phrases such as "fair and equitable . . . promote the purposes of the Act,"²¹ were considered less vague than "when market conditions warrant it . . . for the purpose of protecting the consumer or the coffee industry."²² The court distinguishes the former wording on the basis of its interpretation in light of surrounding conditions, but never investigates the conditions surrounding the delegation in question. The Act calls for a determination of times for rate adjustment and of the effects of those adjustments upon consumers or the coffee industry. This would seem to be a matter requiring the application of expert knowledge and a matter suited to the administrative process, especially under an act obviously contemplating a balancing of interests between consumers and the industry.²³ Quick action in changing rates may be required—quick action which the legislature is normally unable to take—in keeping pace with volatile market conditions. The court also fails to note the administrative safeguards included within the amendment—the requirement of the Governor's approval and the requirement of a statement of considerations²⁴—and provisions providing for judicial review.²⁵

It is difficult to visualize an affirmance of this decision. No express authority is cited. Indeed the only express authority available is that of the *Panama Refining* and *Schechter* cases, and the Supreme Court has already shown its willingness to ignore these decisions.²⁶ The negative authority cited by the court is not persuasive. While it is possible to draw fine distinctions between the words of the various delegations, these are meaningless. The grants involved in most of the cases cited are just as broad, if not broader, than the grant in question. More importantly, the court failed to go through the balancing process noted before, and indeed failed to take into consideration the surrounding factors which have been relied upon by the Supreme Court in its decisions.

As a matter of policy, this decision should not stand. "Delegation by (the legislative branch) has long been recognized as necessary in order that the exertion of legislative power does not become a futility."²⁷ Consideration of only the words used in establishing standards, and the consequent failure

²⁰ "The Acts of Congress to which we have adverted demonstrate the boundaries which have been attached to the exercise of the delegation of power to alter tariff rates." 177 F. Supp. at 778.

²¹ *Yakus v. United States*, *supra* note 19.

²² 177 F. Supp. at 777.

²³ A similar balancing of interests was involved in the delegation upheld by the Supreme Court in the *Rock Royal* case. *United States v. Rock Royal Co-operatives*, *supra* note 11.

²⁴ 13 L.P.R.A. § 2201, *supp.* Note that one of the bases of the *Panama Refining* decision was the lack of similar safeguards.

²⁵ 4 L.P.R.A. § 35 (Supreme Court); 4 L.P.R.A. § 121 (Superior Courts).

²⁶ *Fahey v. Mallonee*, *supra* note 12.

²⁷ *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 398 (1940), which was a case involving the authority to fix maximum prices when *deemed necessary* by the delegate to protect consumers.

to look to their context, limits the legislature in delegating to other bodies matters which can be better handled by those bodies. Such limitation is inconsistent with today's principles of positive government. Courts should be quite hesitant to overturn legislative determinations of the manner in which governmental power should be exercised, and should look to all available factors in an attempt to perceive the adequacy of the standards given. The legislature is, after all, much closer than the court to limitations on the legislative process that compel or encourage delegation. Delegation should not be unduly limited, certainly, where its obvious purpose is to take advantage of expertise, and where it does not offend the principle of separation of powers.

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